

BETWEEN:

SEAN PERRIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 11, 2010 at Kingston, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Jack Warren

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2007 taxation year is dismissed. Each party shall bear their own costs.

Signed at Ottawa, Canada this 17th day of June 2010.

“J. M. Woods”

Woods J.

Citation: 2010 TCC 331
Date: 20100617
Docket: 2009-3423(IT)I

BETWEEN:

SEAN PERRIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The issue in this appeal is whether the appellant, Mr. Sean Perrin, is entitled to claim one of his children as a dependant for purposes of determining his tax liability under the *Income Tax Act* for the 2007 taxation year.

[2] According to the reply filed by the respondent, the issue is relevant for purposes of the personal tax credit in subsection 118(1) of the *Act* and for other purposes that were not specified.

[3] Since the arguments at the hearing were limited to the personal tax credit in subsection 118(1), that is the only issue that I propose to consider.

[4] Mr. Perrin submits that he is entitled to the tax credit provided by paragraph 118(1)(b) for one of his two children because he was separated from his spouse during the relevant year and the children lived with him 50 percent of the time. He stated that the spouses had agreed that they would each claim one of the children as a dependant.

[5] The respondent acknowledges that the conditions in paragraph 118(1)(b) have been satisfied by Mr. Perrin.

[6] However, the respondent submits that paragraph 118(1)(b) is not applicable because Mr. Perrin was required to pay child support to his spouse. The relevant provision, subsection 118(5), provides:

118(5) No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4)) to the individual's spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

(a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or

(b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or common-law partner or former spouse or common-law partner. [Emphasis added]

[7] Mr. Perrin submits that subsection 118(5) does not apply in his circumstances because he is not required to pay child support. He submits that the term "required" implies that the support is governed by a court order.

[8] I disagree. The interpretation suggested by the appellant fails to give the term "required" its ordinary meaning. I agree that the term suggests an imperative, but I do not agree that it implies an imperative directed by a court.

[9] In this case, Mr. Perrin was obligated to pay monthly child support in the relevant taxation year pursuant to a written separation agreement made on November 14, 2006. The agreement was prepared by a lawyer and there is no reason to think that it is not binding and enforceable by law.

[10] The child support payments under this agreement were required to be made, in my view.

[11] Mr. Perrin also submits that s. 118(5) does not apply because both he and his spouse pay child support to each other pursuant to federal support guidelines. The reason for this, it is submitted, is that each parent earns income which gives rise to a child support obligation which is netted under the guidelines.

[12] The circumstance of both spouses paying child support is specifically contemplated by subsection 118(5.1) of the *Act*, which came into force beginning

in 2007. It would provide the relief sought by the appellant if in fact both spouses paid child support. Neither party referred to this provision at the hearing, and it is reproduced below.

118(5.1) Where, if this Act were read without reference to this subsection, solely because of the application of subsection (5), no individual is entitled to a deduction under paragraph (b) or (b.1) of the description of B in subsection (1) for a taxation year in respect of a child, subsection (5) shall not apply in respect of that child for that taxation year.

[13] This provision is intended to avoid the harsh application of s. 118(5) where both spouses pay child support for the same child in the relevant year. It is designed to enable one of the spouses to claim the tax credit under paragraph 118(1)(b) in these circumstances.

[14] This provision has no application here, however, because only Mr. Perrin was required to pay child support in the 2007 taxation year. The relevant clauses in the Separation Agreement are set out below:

10.1 Commencing on the sale of the matrimonial home, and on the 1st day of each subsequent month thereafter, the husband shall pay to the wife, for the support and maintenance of the children, the sum of \$376.50 per month per child, for a total of \$753.00 (based upon a salary of \$50,000) per month [...].

10.2 The husband and the wife agree to use the Federal Guidelines to establish child support.

10.3 (1) The husband acknowledges that he will pay the full child support figure outlined in the Federal Guidelines despite the fact that there is an equal shared access schedule. This clause will apply to any variation for child support based on a change in the husband's income.

[15] These provisions strongly suggest that only Mr. Perrin was required to pay child support for the two children in the 2007 taxation year. I am not satisfied based on the evidence presented that the Federal Guidelines would provide for a different result.

[16] In reaching this conclusion, I have reviewed the decision of Lamarre J. in *Rabb v. The Queen*, 2006 TCC 140, 2006 DTC 2674, which was not referred to at the hearing. In that case, it was determined that child support was required to be paid by each parent under the Federal Guidelines when they each had custody of one of the children. The facts in that case are distinguishable because Mr. Perrin and his spouse

had shared custody of both children.

[17] Mr. Perrin further submits that the legislation should be applied in an equitable manner so that he and his spouse could each claim the tax credit for one of their children as they had agreed to do.

[18] This Court has no power to grant this relief. Parliament has the power to enact tax legislation, and this Court's mandate is only to ensure that tax assessments conform to that legislation. Parliament has not extended the dependant tax credit to persons in Mr. Perrin's circumstances and it is Parliament's prerogative to do so.

[19] The appeal will be dismissed.

Signed at Ottawa, Canada this 17th day of June 2010.

“J. M. Woods”

Woods J.

CITATION: 2010 TCC 331

COURT FILE NO.: 2009-3423(IT)I

STYLE OF CAUSE: SEAN PERRIN and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Kingston, Ontario

DATE OF HEARING: June 11, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: June 17, 2010

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Jack Warren

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada